IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.112 OF 2005
WITH
CIVIL APPLICATION NO.204 OF 2005

Neelam D. Shewale ...Appellant
Vs.
Dadasaheb Bandu Shewale ...Respondent

Appellant in person
Mr.Lalwani for Respondent

CORAM: H.L.GOKHALE &
SMT.R.S.DALVI,JJ.
DATED: 26TH SEPTEMBER, 2005

P.C.

1. Heard the Appellant in person. The Respondent is present. We have heard his Counsel Mr. Lalwani. The Appeal is filed against the Judgment and Order passed by the Family Court, whereby the Petition for Divorce filed by the Respondent herein was decreed. The Judgment was rendered in a situation wherein the Respondent had completed his evidence, but was not cross examined by the Appellant nor had Appellant led her evidence.

2. The Appellant submits that this was because of various difficulties from her side. Mr. Lalwani, learned Counsel appearing for the Respondent on the other hand submits that it is the Appellant who was fully responsible for that situation. She has remained absent and not cross examined the Respondent

or his witnesses. Mr. Lalwani also points out the conduct of the Appellant which according to him is not something which can be appreciated.

3. Having noted this submission of Mr. Lalwani we cannot but note that the impugned order is in a Divorce Petition and that being so it would be desirable that the Appellant gets the opportunity to cross examine the Respondent and his witnesses. She should also get opportunity to lead her evidence. It is thereafter only that the appropriate orders have to be passed.

4. In the circumstances we allow this Appeal and set aside the impugned Judgment and Order passed on 29th June 2005 only on this ground. Allowing of this Appeal does not mean any reflection on the approach adopted by the learned Judge or any of her other observations. In as much as the Appeal has been allowed, the Petition No.A-1633 of 1997 will stand restored to the file of the learned Principle Judge of the Family Court.

5. Mr. Lalwani, learned Counsel for the Respondent points out that this is a old matter and it is high time that it is ought to be decided at the earliest. We quite appreciate his anxiety that the Petition ought to be decided at the earliest. The Appellant needs time to engage Advocate. The

Principle Judge of the Family Court will request preferably one of the good Lady Lawyer functioning in that Court to appear for the Appellant herein the Legal Aid Committee. The Appellant will accept that Advocate to appear for her. For any reason if she declines to take assistance of that Advocate she will have to engage her own Advocate or to appear herself. She seeks liberty to amend her Written Statement. She should do so within 4 weeks from today.

6. Matter will appear before the Family Court on 24th October, 2005 before which the Appellant will carry out the amendment in her Written Statement. Respondent will remain present on that date and the Appellant's Advocate and/or herself will cross examine the Respondent. Thereafter the Respondent may inform the Court as to when the other two witnesses will remain present and accordingly the date will be given to the Appellant to remain present and cross examine. She will examine herself thereafter and her witnesses.

7. The Appellant needs somebody to accompany her, she will produce the tickets for herself and her escort and Mr. Lalwani agrees that the expenses will be paid in the Court itself for the Appellant and her escort.

8. The trial Judge will proceed if possible on day-today basis. However if this is not possible in

any case she will conclude the proceeding preferably by the end of February, 2006.

9. The Appeal is allowed in these terms though without any order as to costs.

10. The trial Court will proceed on the authenticated copy of this order.

11. The Appellant assures that she will co-operate in the proceeding before the trial Court. She needs the copies of the evidence recorded, so far Mr. Lalwani assures that same will be made available within 2 weeks and in any case on 24th October, 2005. He will also file the pay-slip of the Respondent of the current month. The Appellant needs the evidence recorded in the Court at Pandharpur. Mr. Lalwani assures that, that will be made available to the Appellant. Writ to go down forthwith.

(H.L.GOKHALE,J.)

(SMT.R.S.DALVI,J.)